

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FM FL PROPERTIES LLC,

Plaintiff,

v.

Case No.: 2:23-cv-358-SPC-KCD

THE HARTFORD INSURANCE
COMPANY OF THE SOUTHEAST,

Defendant.

_____ /

ORDER¹

Before the Court is FM FL Properties, LLC's ("FM Properties") Complaint. ([Doc. 1](#)). This is a breach of contract action involving property damage that occurred because of Hurricane Ian.

FM Properties does not clearly state the basis for this Court's jurisdiction over this matter. But FM Properties does cite [42 U.S.C. § 4072](#) in support of venue.

Federal courts are courts of limited jurisdiction and have "an independent obligation to determine whether subject-matter jurisdiction exists, even in the absence of a challenge from any party." [Arbaugh v. Y.H.](#)

¹ Disclaimer: Papers hyperlinked to CM/ECF may be subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or their services or products, nor does it have any agreements with them. The Court is not responsible for a hyperlink's functionality, and a failed hyperlink does not affect this Order.

Corp., 546 U.S. 500, 514 (2006) (citing *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999)).

If FM Properties intended to invoke this Court’s jurisdiction under 42 U.S.C. § 4072, it has not properly done so.² First, it is unclear from the face of the Complaint that FM Properties intended to invoke this Court’s jurisdiction under 42 U.S.C. § 4072. Second, the Complaint states that the insurance policy at issue is a homeowner’s insurance policy, not a flood insurance policy that would permit the exercise of jurisdiction under 42 U.S.C. § 4072.

The Court finds that FM Properties has not met its burden of establishing this Court’s subject matter jurisdiction over this action.

Accordingly, it is now

ORDERED:

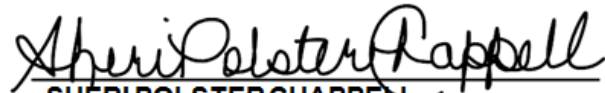
1. Plaintiff FM FL Properties, LLC’s Complaint ([Doc. 1](#)) is **DISMISSED without prejudice** for lack of subject matter jurisdiction.

2. Plaintiff may file an amended complaint on or before **June 6, 2023**.

Failure to do so will cause the Court to close this case without further notice.

² The Court presumes this was FM Properties’ intent due to the Complaint’s reference to 42 U.S.C. § 4072 and because FM Properties has not pled any of the conditions for diversity jurisdiction under 28 U.S.C. § 1332. The Complaint states that the amount in controversy is “more than \$30,000” and does not properly allege the citizenship of FM Properties nor of Defendant. ([Doc. 1](#)).

DONE and **ORDERED** in Fort Myers, Florida on May 25, 2023.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record